

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ROGELIO YOUNG,

Plaintiff,

-VS-

TODD L. TRYON, Assistant Field Office Director,
MICHAEL FINNIGAN, Recreation Specialist, MR.
BECK, Recreation Specialist, MR. LASLY, Grievance
Officer, MS. PICKENS, Medical Staff, SEAN
MCMAHAN, R.N., CDR, Public Health Services,
Health Services Administrator, MARC SMITH, De-
portation Officer and METRO BARBOSA-GROUP,

Defendants.

DECISION AND ORDER

12-CV-6251-CJS-MWP

Siragusa, J. Now before the Court is the Report and Recommendation of the Honorable Marian W. Payson, United States Magistrate Judge, filed on January 23, 2015, ECF No. 50, recommending that a motion to dismiss filed on September 7, 2012, ECF No. 21, and another motion to dismiss filed on November 7, 2013, ECF No. 41, be granted with leave to replead certain claims. Judge Payson's Report and Recommendation was served on Plaintiff by regular mail to his listed address on Madison Avenue in New York City on January 23, 2015. Pursuant to 28 U.S.C. § 636, and L.R. Civ. P. 72, he had fourteen days after a receipt of the Report and Recommendation to file any objections. The fourteenth day from January 23 was February 6, 2015, and this Decision and Order is being written on February 11, 2015, nineteen days following the docketing. To date, no objections have been filed. The Court also notes that Judge Payson indicated in her Report and Recommendation that Plaintiff did not oppose the motions to dismiss.

Based upon the analysis in Judge Payson's well-reasoned Report and Recommendation, the Court accepts in whole her recommendations. Accordingly, it is hereby,

ORDERED, that the motion by Todd L. Tryon, et al., to dismiss, ECF No. 21, is granted in whole; and it is further

ORDERED, that the motion by Valley Metro-Barbosa Group, ECF No. 41, is granted in whole; and it is further

ORDERED, that Plaintiff may file an amended complaint **not later than March 11, 2015**, with the *exception* of any of the following types of claims:

- Official capacity claims seeking monetary damages;
- Claims for injunctive relief;
- Claims asserted against Sean McMahan; and
- Any *Bivens* claims arising out of the conditions of confinement asserted against Valley Metro-Barbosa Group.

IT IS SO ORDERED.

DATED: February 11, 2015

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge